No. 15243

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ROBERT C. KIRKWOOD, Controller of the State of California,

Appellant,

vs.

LEE ARENAS, RICHARD BROWN ARENAS and UNITED STATES OF AMERICA,

Appellees.

Appeals From the United States District Court for the Southern District of California, Central Division.

APPELLANT'S BRIEF.

JAMES W. HICKEY,
Chief Inheritance Tax Attorney,
WALTER H. MILLER,
Chief Assistant Inheritance Tax Attorney,
VINCENT J. McMAHON,
Assistant Inheritance Tax Attorney,
520 Rowan Building,
Los Angeles 13, California,
Attorneys for Appellant.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX

PAGE

TABLE OF AUTHORITIES CITED

CASES — PAGE

STATUTES

PAGE

No. 15243

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ROBERT C. KIRKWOOD, Controller of the State of California,

Appellant,

vs.

LEE ARENAS, RICHARD BROWN ARENAS and UNITED STATES OF AMERICA,

Appellees.

Appeals From the United States District Court for the Southern District of California, Central Division.

APPELLANT'S BRIEF.

Statement of Pleadings and Facts Disclosing Jurisdiction.

The issues herein are raised by the following pleadings:

Case No. 1321-WM Civil.

(1) The verified petition of Lee Arenas and Richard Brown Arenas in which they prayed, *inter alia,* for determination of the taxes, if any, which are a lien upon funds remaining on deposit in the registry of this court in Case No. 1321—WM Civil and an Order to Show Cause directed to the United States of America and to

the State of California that each appear before this court and show cause why this court should not:

(a) Determine that the State of California has no tax obligation or lien against either of the petitioners and that the funds on deposit in the registry of the court are not subject to any lien in its favor.

(2) The answer, and amended answer, of the State of California, by and through Robert C. Kirkwood, as State Controller, in which it is alleged and asserted that such funds in the registry of the court are subject to inheritance tax liens, in amounts not yet fixed and determined, arising from the successive deaths of Guadalupe Arenas, who was the wife of Lee Arenas and the adoptive grandmother of Richard Brown Arenas, and of Eleuteria Brown Arenas, who was the mother of Richard Brown Arenas, and further alleging that such inheritance taxes became and were liens upon such funds under certain laws of the State of California.

Case No. 6221-WM Civil.

(1) The verified petition of Richard Brown Arenas praying, *inter alia,* for determination of the taxes, if any, which are a lien upon funds remaining on deposit in the registry of this court in Case No. 6221-WM Civil and an Order to Show Cause directed to the United States of America and to the State of California that each appear before this court and show cause why this court should not:

(a) Determine that the State of California has no tax obligation or lien against said petitioner and that the funds on deposit in the registry of the court are not subject to any lien in its favor.

(2) The answer, and amended answer, of the State of California, by and through Robert C. Kirkwood, as State Controller in which it is alleged and asserted that such funds are subject to an inheritance tax lien, in an amount not as yet fixed and determined, arising from the death of Eleuteria Brown Arenas, the mother of said petitioner, and under said laws of the State of California.

The facts of the case are as follows: On the 24th day of February, 1949, Guadalupe Rice Arenas received a trust allotment of certain lands. [*Tr. pp. 8, 87, 89, par. (8) thereof.] The said Guadalupe Rice Arenas (hereinafter referred to as Guadalupe Arenas for purposes of brevity) died intestate on March 26, 1937. [Tr. pp. 8, 88, 89, par. 8 thereof.] Upon her death her interest in said trust allotments passed one-half to her husband Lee Arenas and one-half to her daughter Eleuteria Brown Arenas (hereinafter referred to as Eleuteria Arenas for the purposes of brevity). [Tr. pp. 10, 11, 88, 89, par. 8.] Eleuteria Arenas received a trust allotment of certain lands on the 24th day of February, 1949. [Tr. pp. 27, 90, par. 9 thereof.] Eleuteria Brown died intestate on April 26, 1954, and upon her death her interest in the lands received by inheritance from her mother Guadalupe Arenas as well as the allotted lands received by her from the United States passed to her son Richard Brown Arenas (hereinafter referred to as Richard Arenas for the sake of brevity). [Tr. pp. 13, 29, 88, par. 4.] On April 6, 1951, a Judgment and Supplemental Decree was entered holding that the attorneys who represented the Indians in the litigation regarding the allotments were entitled to a lien on the trust allotments in payment of their fees. [Tr. pp. 9, 28, 88, 89, par. 8, 90, par. (9).]

---

*Tr. refers to Transcript of Record.

Pursuant to this judgment certain portions of the trust allotment of Guadalupe Arenas and Eleuteria Brown were sold. [Tr. pp. 12, 16, 17, 18, 31, 32, 87, 88, 89, par. (8), 90, par. (9).] In order to consummate said sales it was necessary to obtain a release of inheritance tax lien from the State of California which was given by the State Controller on the condition that the lien, if any, would be transferred and affixed to the funds deposited in the registry of the court. [Tr. pp. 16, 34, 88, 89, par. (6) and (8), 90 par. (9).] Thereafter the petitioners herein Lee Arenas and Richard Brown Arenas filed Orders to Show Cause [Tr. pp. 3, 5] and Petitions for allocation of Funds and determination of taxes and liens thereof which existed against the funds on deposit in the registry of the court. [Tr. pp. 7, 27.] The Controller filed an Answer and Amended Answer contending that an inheritance tax was due by reason of the deaths of Guadalupe Arenas and Eleuteria Arenas and therefore a lien for such taxes existed against the funds on deposit in this registry of the court. [Tr. pp. 39, 42, 58, 64.] After hearing on the argument, the facts herein not being in dispute, Judge Mathes of the District Court determined that the assessment of a California inheritance tax was prohibited by certain congressional statutes and therefore no inheritance tax was due to the State of California by reason of the transfer upon death of the trust allotments in question. [Tr. pp. 72-82.] Thereafter Findings of Fact, Conclusion of Law and Order were made and Judgment entered on May 31, 1956 [Tr. pp. 83-92] denying the right of California to assess an inheritance tax on the transfer upon death of the said trust allotments. On July 27, 1956, the State Controller filed his Appeal. [Tr. pp. 93, 94.] The State Controller submitted his statement of points on Appeal. [Tr. pp. 95, 96.] Thereafter the certificate of the Clerk of the United States

District Court was filed herein on August 29, 1956. [Tr. pp. 98-100.]

The jurisdiction of the court herein rests on its jurisdiction to determine the interpretation to be given to the General Allotment Act (25 U. S. C., Secs 331-357, 24 Stats. 388); to the Mission Indian Act (26 Stats. 712, 39 Stats. 976); to the statutes granting limited civil and criminal jurisdiction to the State of California, namely, Section 1162 of 18 U. S. C. and Section 1360 of 28 U. S. C. enacted in 67 Statutes 588, 589; the enactment and repeal of Section 1 of 63 Stats. 705, Ch. 604.

The General Allotment Act (*supra*) generally provides the general law relating to trust allotments, their creation, duration, termination as well as all other pertinent provisions relating to allotments.

The Mission Indian Act (*supra*) provided for the relief of Mission Indians of California and in particular set forth the provisions relating to trust allotments for such Indians.

Section 1162 and Section 1360 (*supra*) are statutes defining civil and criminal court jurisdiction relating to California Indians.

Section 1 of 63 Stats. 705, Ch. 604 is a statute relating to civil and criminal court jurisdiction over the Agua Caliente Band of Mission Indians. It was enacted in 1950 and repealed in August 1953.

The pleadings as listed in the beginning of this statement of facts lists the pleadings which bring into issue the necessity for a court interpretation on the right of California to assess an inheritance tax on the trust allotments herein with a resulting lien for such taxes on said land and the proceeds of sale of such land.

Statement of the Case.

The fundamental question in this case is whether on the death of a member of the Agua Caliente Band of Mission Indians of California, to wit, Guadalupe Rice Arenas and Eleuteria Brown Arenas, the transfer of their trust allotments to their heirs is subject to the California Inheritance Tax law. If such transfer is subject to the California Inheritance Tax law, then the question arises as to whether the lien for inheritance taxes, which attaches at the date of death pursuant to the California law, attaches to said trust allotments and the proceeds of the sale of certain of such trust allotments presently held in the registry of the United States District Court.

The funds in controversy are remnants of larger funds derived from sales, with the consent of the United States, of a portion of the lands within the Palm Springs Reservation of the Agua Caliente Band of Mission Indians previously allotted to Lee Arenas, Guadalupe Rice Arenas and Eleuteria Brown Arenas. The sales were made in proceedings ancillary to their suits for allotment in order to provide cash with which to pay the fees and expenses of the attorneys who represented the said Indians in establishing their rights to the allotments in question. Portions of the allotments belonging to Guadalupe Rice Arenas and Eleuteria Brown Arenas, which were transferred to their heirs upon death, were sold and as to the proceeds of those sales the State Controller contends that a lien for California inheritance taxes exists against such funds.

Specification of Errors.

Robert C. Kirkwood, State Controller, makes the following specification of errors:

1. The District Court erred in determining that certain funds on deposit in the registry of said court, derived from the sale of certain lands included in a trust patent issued to the heirs of Guadalupe Arenas on February 24, 1949, are not subject to a lien in favor of the State of California for California State inheritance taxes as against Lee Arenas, Eleuteria Brown Arenas and Richard Brown Arenas.

2. The District Court erred in determining that upon the death of Guadalupe Arenas on March 26, 1937, the transfer to her heirs Lee Arenas and Eleuteria Brown Arenas of certain lands held under a trust patent issued to Guadalupe Arenas on February 24, 1949, *nunc pro tunc* May 9, 1927, was not taxable for California State inheritance tax purposes.

3. The District Court erred in determining that certain funds on deposit in the registry of said court, derived from the sale of certain lands included in a trust patent issued to Eleuteria Brown Arenas are not subject to a lien in favor of the State of California for California State inheritance taxes as against Richard Brown Arenas.

4. The District Court erred in determining that upon the death of Eleuteria Brown Arenas on April 26, 1954, the transfer to her heir Richard Brown Arenas of certain lands held under a trust patent issued to Eleuteria Brown Arenas on February 24, 1949, and of certain lands held under a trust patent issued to Guadalupe Arenas on February 24, 1949, and inherited by Eleuteria Brown Arenas from the said Guadalupe Arenas was not taxable for California State inheritance tax purposes.

5. The finding of fact in paragraph (4) thereof [Tr. p. 88] and paragraph (8) thereof [Tr. p. 89] that Richard Arenas, Lee Arenas and Eleuteria Arenas received their inheritance by virtue of Section 372, Title 25 U. S. C. is in error in that actually they received their rights of inheritance by virtue of Section 5 of the Mission Indian Act (26 Stats. 712).

6. The finding of fact in paragraph (6) thereof [Tr. p. 89] is in error in that the court found that the trust patents issued herein were issued pursuant to Section 348, 25 U. S. C. whereas in fact such trust patents were issued under Section 4 of the Mission Indian Act (26 Stat. 712).

7. The Conclusion of Law in paragraph (1) thereof [Tr. p. 90] that the funds on deposit in the registry of the court are immune and not subject to California's claim for inheritance taxes is in error since in fact such funds are subject to such a lien.

Summary of Argument.

I.

The transfer upon death of a trust allotment of a member of the Agua Caliente Band of Mission Indians to the heirs of said Indian is not excluded by Federal law from inheritance taxes imposed by the State of California.

a. The United States Supreme Court has affirmed that the transfer at death of property belonging to Indians held in trust by the United States is taxable for inheritance tax purposes by a state unless specifically prohibited by Congress.

b. Congress has not exempted from inheritance taxes the trust allotments awarded to members of the Agua Caliente Band of Mission Indians.

1. Section 6 of the General Allotment Act, which exempts from taxation trust allotments issued under the General Allotment Act, does not apply to the Agua Caliente Band of Mission Indians.
2. Section 5 of the Mission Indian Act of 1891 does not exempt the trust allotments of the Agua Caliente Band of Mission Indians from inheritance taxes imposed by the State of California.
3. Statutes ceding limited state jurisdiction over civil and criminal actions involving the Indians of California are not tax exemption statutes.

i. Subsections (b) of Sections 1162 and 1360 are not affirmative legislation implementing tax exemption, but are merely negative limitations upon the scope of the affirmative part of said sections, to wit, subsections (a).

ii. Even if it is conceded that subsections (b) of Sections 1162 and 1360 constitute affirmative legislation by Congress relating to taxation, still such sections do not cover inheritance taxes.

c. The fact that the trust allotments pass at death by virtue of the laws of the United States does not preclude the right of California to assess an inheritance tax on said properties.

II.

The Inheritance Tax Law of the State of California includes within its scope the transfer upon death of the trust allotments herein.

III.

A lien for California inheritance taxes exists against the funds on deposit in the registry of the court.

Conclusion.

ARGUMENT.

I.

The Transfer Upon Death of a Trust Allotment of a Member of the Agua Caliente Band of Mission Indians to the Heirs of Said Indian Is Not Excluded by Federal Law From Inheritance Taxes Imposed by the State of California.

(a) The United States Supreme Court Has Affirmed That the Transfer at Death of Property Belonging to Indians Held in Trust by the United States Is Taxable for Inheritance Tax Purposes by a State Unless Specifically Prohibited by Congress.

The right of a state to subject to an inheritance tax, property held in trust by the United States for an Indian, was decided by the United States Supreme Court in *West v. Oklahoma Tax Commission,* 334 U. S. 717, 68 S. Ct. 1223, 92 L. Ed. 1676. Its decision was based upon its prior decision in *Oklahoma Tax Commission v. United States,* 319 U. S. 598, 63 S. Ct. 1284, 87 L. Ed. 1612. Taken together these two cases clearly establish that a state may impose an inheritance tax upon the transfer at death of property held in trust by the United States for an Indian.

In *West v. Oklahoma Tax Commission,* 334 U. S. 717 at 727, 68 S. Ct. 1223, 92 L. Ed. 1676, it is stated:

> "An inheritance or estate tax is not levied on the property of which an estate is composed. Rather it is imposed upon the shifting of economic benefits and the privilege of transmitting or receiving such benefits. *United States Trust Co. v. Helvering,* 307 U. S. 57, 60; *Whitney v. Tax Commission,* 309 U. S. 530, 538. In this case, for example, the decedent had a vested interest in his Osage headright; and he

had the right to receive the annual income from the trust properties and to receive all the properties at the end of the trust period. At his death, these interests and rights passed to his heir. It is the transfer of these incidents, rather than the trust properties themselves, that is the subject of the inheritance tax in question. In this setting, refinements of title are immaterial. Whether legal title to the properties is in the United States or in the decedent and his heir is of no consequence to the taxability of the transfer."

The fact, therefore, that the allotments in this case are held in trust for the Indians by the United States does not in and of itself prohibit the imposition of inheritance taxes by the State of California on said trust allotments. The State of California may therefore impose such a tax. However, this right to impose a tax is not unlimited. The Supreme Court has clearly indicated that in those cases where Congress has intervened and granted an exemption that in those cases the State will be prohibited from assessing a tax. In *West v. Oklahoma Tax Commission,* 334 U. S. 717 at 727, 728, 68 S. Ct. 1223, 92 L. Ed. 1676, it is stated:

"The result of permitting the imposition of the inheritance tax on the transfer of trust properties may be, as we have noted, to deplete the trust corpus and to create lien difficulties. But those are normal and intended consequences of the inheritance tax. And until Congress has in some affirmative way indicated that these burdens require that the transfer be immune from the inheritance tax liability, the Oklahoma Tax Commission case permits that liability to be imposed. But that case also makes clear that should any of the properties transferred be exempted

by Congress from direct taxation they cannot be included in the estate for inheritance tax purposes. No such properties are here involved, however."

The question to be determined therefore is whether Congress has in fact exempted from tax the trust allotments awarded to the members of the Agua Caliente Band of Mission Indians. If no such exemption has in fact been given, then California may assess an inheritance tax on these trust allotments.

(b) Congress Has Not Exempted From Inheritance Taxes the Trust Allotments Awarded to Members of the Agua Caliente Band of Mission Indians.

1. Section 6 of the General Allotment Act, Which Exempts From Taxation Trust Allotments Issued Under the General Allotment Act, Does Not Apply to the Agua Caliente Band of Mission Indians.

Section 6 of the General Allotment Act (25 U. S. C., Sec. 349), provides in brief as follows:

> "That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent . . ."

Judge Mathes in his memorandum of decision in the District Court [Tr. p. 81] based the exemption of these

trust allotments in part on Section 6 of the General Allotment. In addition in the recent case of *Squire v. Capoeman,* 351 U. S. 1 at 7, 8, 76 S. Ct. 611, 100 L. Ed. 477, the Supreme Court interpreted said Section 6, as exempting from Federal income taxes, a trust allotment awarded to a Quinaielt Indian of the State of Washington under the General Allotment Act. It would appear therefore that as to trust allotments issued under the General Allotment Act, Section 6 is effective to exempt such trust allotments from taxes.

It is the position of the State Controller, however, that the trust allotments awarded to the Mission Indians do not come within the provisions of the General Allotment Act (25 U. S. C., Secs. 331 to 357; 24 Stats. 388) but that in fact the allotments, made to the Indians in the instant case, are governed by the Mission Indian Act, 26 Stats. 712. Such being the case, Section 6 of the General Allotment Act would not be applicable in the present case and it would not serve to exempt from taxes the trust allotments awarded to the Mission Indians.

In this regard we refer to *St. Marie v. United States,* 108 F. 2d 876 at 880, 881. In that case the Mission Indians urged that they had acquired vested rights to trust allotments by reason of the General Allotment Act and therefore they insisted that the action of the Secretary of Interior in awarding the allotments was a mere ministerial act which should be completed. The court however rejected their argument and held that such vested rights accrue only where a specific statute has given the Indians a right of selection. It was further held that the Mission Indian Act did not give such right of selection and that the General Allotment Act which did give such

right of selection was not applicable to the Mission Indians. At 108 F. 2d 876 at 881 it is stated:

> "Finally it is urged that the Act of February 14, 1923, Ch. 76, 42 Stat. 1246, 25 U. S. C. A., §335, makes the General Allotment Act applicable to the Mission Indians . . .
>
> "We think this provision does not have the effect ascribed to it . . . It does not refer to or mention the Mission Indian Act, and is merely a part of the General Allotment Act."

Actually, although the Mission Indians did not come within the scope of the General Allotment Act, the Indian agent who assisted them in making their allotments certified that the allotments were made under the General Allotment Act. The court completely discounted this fact and adhered to its opinion that any allotments to be made for the Mission Indians had to be made under the Mission Indian Act and not the General Allotment Act. In this regard (*St. Marie v. United States,* 108 F. 2d 876 at 879) it was stated:

> "It is further asserted that the certificate of Wadsworth to the allotment schedules of 1927, indicates that the General Allotment Act is applicable. We do not believe that such a statement by a subordinate officer can be said to be indicative of congressional intent. It amounts to no more than an erroneous opinion . . ."

This opinion of the Circuit Court of Appeals that the General Allotment Act is not applicable to the Mission Indians has in effect been affirmed by the United States Supreme Court. In *Arenas v. United States,* 322 U. S. 419, 64 S. Ct. 1090, 88 L. Ed. 1363, the Supreme Court in its discussion of the applications of the Mission Indians

for trust allotments indicated that the pertinent law was the Mission Indian Act and not the General Allotment Act. All through its opinion in its discussion of the application of Lee Arenas the Court refers to the Mission Indian Act. The Supreme Court recognized the distinction between the General Allotment Act and the Mission Indian Act. It referred specifically to the General Allotment Act and then referred to the Mission Indian Act. As to the latter Act, the Court affirmed that such Act was enacted specifically for the Mission Indians. On page 420 of said opinion it said:

> "For a long period Congress pursued the policy of imposing as rapidly as possible, our system of individual land tenure on the Indians. To this end tribal or communal land holdings of the Indians were superseded by allotment to individuals, who were protected against improvidence by restraints on alienation. [General Allotment Act of 1887, 24 Stats. 388, 25 U. S. C. 331.] The Mission Indians had deserved well and fared badly and Congress passed the Mission Indian Act of 1891 for their particular redress."

There is no question therefore but that the Supreme Court in said case clearly recognized that the rights of the Mission Indians had their origin in the Mission Indian Act and not the General Allotment Act.

In approving the trust allotments herein for Lee Arenas and Guadalupe Arenas, the Circuit Court of Appeals in *United States v. Arenas,* 158 F. 2d 730, used as a guidepost the opinion of the United States Supreme Court in *Arenas v. United States,* 322 U. S. 419.

It is clearly established therefore that the trust allotments awarded to the members of the Agua Caliente

Band of Mission Indians were awarded under the Mission Indian Act and that the General Allotment Act is not applicable to such Mission Indians. As such it is evident that Section 6 of said General Allotment Act is not applicable to the Mission Indians. The tax exemption given under said Section 6 is therefore not available to the Mission Indians.

2. Section 5 of the Mission Indian Act of 1891 Does Not Exempt the Trust Allotments of the Agua Caliente Band of Mission Indians From Inheritance Taxes Imposed by the State of California.

The exemption from taxes provided by Section 6 of the General Allotment Act is therefore not available to the Mission Indians because they are not covered by said Act. However, the question arises as to whether Congress has provided a similar exemption from taxes in the Mission Indian Act. A close examination of said Act (26 Stats. 712 and 39 Stats. 976), clearly indicates that no similar exemption from taxes has been given to the Mission Indians under the Mission Indian Act. The only provision in the Mission Indian Act upon which an argument might be made that a tax exemption has been given to the Mission Indians is found in Section 5 thereof. That section provides as follows:

> "That upon the approval of the allotments provided for in the preceding section by the Secretary of the Interior he shall cause patents to issue therefor in the name of the allottees, which shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall

> have been made, or, in case of his decease, of his heirs according to the laws of the State of California, and that at the expiration of said period the United States will convey the same by patent to the Indian, or his heirs as aforesaid, in fee, discharged of said trust and *free of all charge or incumbrance whatsoever* . . ." (Emphasis added.)

The pertinent portion of Section 5 is the provision that when the trust expires the United States agrees to convey the property to the Indian ". . . free of all charge or incumbrance whatsoever . . ." In *United States v. Rickert,* 188 U. S. 432, 23 S. Ct. 478, 47 L. Ed. 532, it was held that property held in trust for Indians was not subject to a property tax in the State of South Dakota on the basis of the Federal instrumentality theory. A provision similar to Section 5 of the Mission Indian Act was considered which provided that the allotment would at the termination of the trust pass "free of all charge or incumbrance whatsoever . . ." This provision was tied into the Federal instrumentality theory on the basis that if South Dakota assessed a real property tax against the trust allotments it would in effect burden the allotments. That since the Federal Government had agreed to convey the allotment free of any burdens, the Federal Government in effect would have to pay the tax. If it paid the tax, the effect was that the State of South Dakota in effect was taxing the United States Government which of course would be prohibited. On this basis therefore, to wit, the Federal instrumentality theory, the United States Supreme Court prohibited the application of the South Dakota real property tax. The consideration by the court of the statutory provision "free of all charge or incumbrance whatsoever . . ." was merely as part

and parcel of the Federal instrumentality theory and in no sense whatsoever did the court hold or attempt to hold that such language in a statute was of itself a tax exemption statute.

The basis therefore of the *Rickert* case was the Federal instrumentality theory. The Oklahoma Tax Commission cases recognized this fact and on this basis overruled the *Rickert* case. In *West v. Oklahoma Tax Commission,* 334 U. S. 717 at 726, 68 S. Ct. 1223, 92 L. Ed. 1676, it is stated:

> ". . . Moreover express repudiation was made of the concept that these restricted properties were Federal instrumentalities and therefore constitutionally exempt from estate tax consequences . . . The very foundation upon which the Rickert case rested was thus held to be inapplicable."

The rejection of the Federal instrumentality theory impliedly also rejected the former theory that such trust property could not be incumbered by taxes or other charges. This specific point is discussed in the *Oklahoma Tax Commission* cases and the United States Supreme Court held therein that such burdens will not prevent the imposition of an inheritance tax. In *West v. Oklahoma Tax Commission,* 334 U. S. 717 at 727, it was said:

> "The result of permitting the imposition of the inheritance tax on the transfer of trust properties may be, as we have noted, to deplete the trust corpus and to create lien difficulties. But those are normal and intended consequences of the inheritance tax. And until Congress has in some affirmative way indicated that these burdens require that the transfer be immune from inheritance tax liability, the Oklahoma Tax Commission case permits that liability to be imposed."

The rejection of the *Rickert* case therefore necessarily includes a rejection of the conclusion in the *Rickert* case that a provision such as was contained in Section 5, to wit, "free of all charge or incumbrance whatsoever . . ." prevents the assessment of inheritance taxes and a lien therefor as constituting a burden or charge within the meaning of said Section 5. This is further evidenced by the distinction drawn by the Oklahoma Tax Commission between the nature of the property tax which was the tax at issue in the *Rickert* case and an inheritance tax which was the tax involved in the *Rickert* cases. In *West v. Oklahoma Tax Commission,* 334 U. S. 727 at 727 it was said in this regard:

> "Implicit in this Court's refusal to apply the Rickert doctrine to an estate or inheritance tax situation is a recognition that such a tax rests upon a basis different from that underlying a property tax. An inheritance or estate tax is not levied on the property of which an estate is composed. Rather it is imposed upon the shifting of economic benefits and the privilege of transmitting or receiving such benefits. *United States Trust Co. v. Helvering,* 307 U. S. 57, 60; *Whitney v. Tax Commission,* 309 U. S. 530, 538. In this case, for example, the decedent had a vested interest in his Osage headright; and he had the right to receive the annual income from the trust properties and to receive all the properties at the end of the trust period. At his death, these interests and rights passed to his heir. It is the transfer of these incidents, rather than the trust properties themselves, that is the subject of the inheritance tax in question. In this setting, refinements of title are immaterial. Whether legal title

> to the properties is in the United States or in the decedent and his heir is no consequence to the taxability of the transfer."

It is to be concluded therefore from an examination of the *Rickert* case and the *Oklahoma Tax Commission* case that the phrase "free of all charge or incumbrance whatsoever . . ." is not in and of itself a tax exemption statute, and furthermore that such a phrase or a statute while it may permit the assessment of a property tax (which is now questionable in view of the *Oklahoma Tax Commission* cases) it will not prevent the assessment of an inheritance tax which is not a tax on the property but is a tax on the transfer of the economic benefits relating to said property.

This apparently was also the opinion of Judge Mathes in the District Court. In his decision, 140 Fed. Supp. 606 at 608, he stated:

> "Until recently it could be stated as a general proposition that Indian lands held under trust patents, such as those involved here, are immune from all manner of taxation, in view of the undertaking. That at the expiration of said [trust] period the United States will convey the same by patent to said Indian, or his heirs . . . in fee, discharged of said trust and free of all charge or incumbrance whatsoever. . . ."

The Controller submits therefore that the phrase "free of all charge or incumbrance whatsoever . . ." as set forth in Section 5 of the Mission Indian Act, 26 Stats. 712, does not exempt the trust allotments involved herein from the assessment of an inheritance tax by the State of California.

3. Statutes Ceding Limited State Jurisdiction Over Civil and Criminal Actions Involving the Indians of California Are Not Tax Exemption Statutes.

i. Subsections (b) of Sections 1162 and 1360 Are Not Affirmative Legislation Implementing Tax Exemption, but Are Merely Negative Limitations Upon the Scope of the Affirmative Part of Said Sections, to Wit, Subsections (a).

In August, 1953, Congress granted limited criminal and civil jurisdiction over the Indians in California by enacting 67 Statutes 588, 589 (18 U. S. C., Sec. 1162, 28 U. S. C., Sec. 1360). Section 1162 of 18 U. S. C. provides as far as is pertinent to the present case:

> "(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the state to the same extent that such state has jurisdiction over offenses committed elsewhere within the state, and the criminal laws of such state shall have the same force and effect within such Indian country as they have elsewhere within the state:
>
> | State of | Indian country affected |
> |---|---|
> | California | all Indian country within the state. |
>
> "(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian, or any Indian tribe, band, or community that is held in trust by the United States, or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner in-

> consistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto, or shall deprive any Indian, or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing, or the control, licensing, or regulation thereof."

The question is whether this section and its companion section relating to civil jurisdiction, to wit, Section 1360 of 28 U. S. C. (see appendix, p. 1), are tax exemption statutes. It is the contention of the United States that said sections are tax exemption statutes, and Judge Mathes in his memorandum of decision so held. [Tr. pp. 80-81.]

It is the position of the State Controller that said sections are not tax exemption statutes, but are no more nor less than what they purport to be, namely, statutes conferring limited criminal and civil jurisdiction for court actions on the respective states.

The language relied upon as granting the tax exemption is as set forth in subsection (b) of each section. A careful reading of that subsection reveals that it is in the negative. It states:

> "Nothing in this section shall authorize the alienation, encumbrance or taxation. . . ."

It refers to the authority given in subsection (a), which is the affirmative part of the statute. It specifically provides that subsection (a) of said sections does not authorize "alienation, encumbrance, or taxation." It would be absurd to say, therefore, in view of the language of subsection (b), that subsection (a) gives California the

right to tax. The point is that, except for subsection (b), an argument might have been made that subsection (a) would include such authority, but, so that there would be no doubt on the question, subsection (b) was added and it specifically provides that subsection (a) does not include such authority.

But, if subsections (a) of Sections 1162 and 1360 do not give California the right to tax, do subsections (a) of said sections prohibit California from taxing? The answer must be no. As mentioned above, the all-inclusive language of subsections (a) might have been seized upon as an authority to tax, and Congress wished to make it plain that it was not considering alienation, encumbrance, or taxation. If anything, subsections (a) would infer authority on the part of California to tax. It is clear, therefore, that subsections (a) do not prohibit California from taxing.

If California is prohibited from taxing by the sections in question, it is only by virtue of subsections (b). A careful reading of said subsections (b) indicate that the function of said subsections is to define the scope of subsections (a). Their effect is negative. They specify what subsections (a) do not cover. In no sense whatever is there any positive statement which indicates that subsections (b) are affirmative enactments existing independent of subsections (a).

Further evidence that subsections (b) are not affirmative enactments is evidenced from a consideration of their subject matter. To allege that they are tax exemption statutes is to allege that subsections (b) are intended also as statutes that prohibit alienation, and prohibit encumbrancing. For Congress has used the three words in conjunction, and, if subsections (b) are tax exemption

statutes, then they also are alienation statutes and encumbrancing statutes. The Controller submits that such an assumption is unwarranted by virtue of the clear language of the statute. In addition, it will be noted that said sections relate to the Indians in California, Minnesota, Nebraska, Oregon, and Wisconsin. When it is considered that in each state there are many different tribes of Indians, with different rights flowing from different treaties, statutes, and other agreements, it is clear that Congress would not have intended to affect all provisions of alienation, encumbrancing, and taxation of all such Indians by a subordinate clause in a statute dealing with a completely different topic, namely, court jurisdiction.

The Controller submits, therefore, that subsections (b) of said sections must be restricted to their proper function, namely, defining the scope of subsections (a), and they should not be construed to be positive enactments. Their net effect is to maintain the *status quo* as to alienation, encumbrance, and taxation. If such alienation, encumbrance, or tax exemption is to be allowed, it must be by virtue of other Congressional enactments.

ii. *Even if It Is Conceded That Subsections (b) of Sections 1162 and 1360 Constitute Affirmative Legislation by Congress Relating to Taxation, Still Such Sections Do Not Cover Inheritance Taxes.*

Assuming that the contention of the United States is correct, that is, that Sections 1162 and 1360 are tax exemption statutes, the Controller nevertheless submits that such sections do not cover inheritance taxes. At the time Sections 1162 and 1360 were enacted (67 Stats. 588, approved August 13, 1953), Section 5 of the same

statute repealed Section 1 of the Act of October 5, 1949 (63 Stats. 705, ch. 604). The statute, which was repealed, read as follows:

> "That on and after January 1, 1950, all lands located on the Agua Caliente Indian Reservation in the State of California, and the Indian residents thereof, shall be subject to the laws, civil and criminal, of the State of California, but nothing contained in this section shall be construed to authorize the alienation, encumbrance, or *taxation of the lands of the reservation, or rights of inheritance thereof* tribally or individually owned, so long as the title to such lands is held in trust by the United States, unless such alienation, encumbrance, or taxation is specifically authorized by the Congress." (Emphasis added.)

If Sections 1162 and 1360 are tax exemption statutes, then their coverage with respect to the Agua Caliente Band of Mission Indians must be considered in connection with Section 1 of 63 Statutes 705. That section specifically mentioned the alienation, encumbrance, or taxation, not only of the lands but also of the rights of inheritance thereof. That section was then expressly repealed and superseded by Sections 1162 and 1360. The important point is that Sections 1162 and 1360 do not contain the phraseology ". . . rights of inheritance thereof." Where such is the case, it is the rule of statutory construction that Congress intended to exclude from the successor statute the subject previously mentioned and now excluded. (*Steward v. Kahn,* 78 U. S. 493, 11 Wall. 493, 20 L. Ed. 171; *Zientek v. Reading Co.,* 93 Fed. Supp. 875.) Such being the case, it would follow that, even if it conceded that Sections 1162 and 1360 are tax exemption statutes, the failure of those sections to refer

to the taxation of the rights of inheritance must be construed as a clear expression of Congressional intent to omit such subject from the successor statutes.

In either event, therefore, Sections 1162 and 1360 cannot be said to have granted an exemption from inheritance taxes to the Agua Caliente Band of Mission Indians. If subsections (b) are held to be negative limitations upon the affirmative portion of Sections 1162 and 1360, then Sections 1162 and 1360 are not tax exemption statutes. On the other hand, if Sections 1162 and 1360 are held to be tax exemption statutes, then the repeal of Section 1 of the Act of October 5, 1949 (63 Stats. 705, Ch. 604), reveals a clear Congressional intent to exclude from the scope of Sections 1162 and 1360 the taxation of the rights of inheritance of the Agua Caliente Band of Mission Indians.

In addition, the effect of the repeal of Section 1 of the Act of October 5, 1949 (63 Stats. 705, ch. 604), has its effect not only on Section 6 of the General Allotment Act but also on Section 5 of the Mission Indian Act which have been discussed above. Neither of those statutes nor any statutes have specifically mentioned the taxation of the rights of inheritance. Where such a specific mention has been made and has been repealed, it is clear that the effect of such enactment and repeal of Section 1 of 63 Statutes 705 takes precedence over all of the other statutes.

It is the conclusion of the State Controller, therefore, that Congress has not prohibited the State of California from assessing an inheritance tax in this case and therefore under the authority of the *Oklahoma Tax Commission* cases, California may assess an inheritance tax in this case.

(c) The Fact That the Trust Allotments Pass at Death by Virtue of the Laws of the United States Does Not Preclude the Right of California to Assess an Inheritance Tax on Said Properties.

Judge Mathes in his memorandum of decision in the trial court [Tr. p. 77] held that the trust allotments herein passed by virtue of the law of the United States. He therefore concluded that since the transfer of the property was not founded on the law of California, therefore California had no right to tax. He distinguished the *Oklahoma Tax Commission* cases on the ground that in those cases the trust allotments passed by virtue of the law of Oklahoma and therefore Oklahoma had a justification for its tax. On page 80 of the Transcript of Record, he said:

> "This fact lends support to the view that West, *supra,* 334 U. S. 717, and Oklahoma Tax Commission, *supra,* 319 U. S. 598, are to be distinguished from the cases at bar upon the ground that in those cases devolution was by force of Oklahoma law, where as here intestate succession occurred by force of Federal statute, 25 U. S. C. §348."

The Controller submits that there is essentially no difference between the authority which permits the passage of the trust property upon death in Oklahoma, and the authority which permits the passage of the trust property upon death in California. In both cases the trust property devolves in accordance with the state law but not by force of the state law. Passage of the property in both cases results under and by force of appropriate Acts of Congress.

In *West v. Oklahoma Tax Commission,* 334 U. S. 717 at 722, the United States Supreme Court points out the

Federal statutes which authorize the passage of trust property upon death in the State of Oklahoma. They are Section 6 of the Osage Allotment Act, 34 Stats. 539, and the amendatory statute enacted, to wit, 37 Stats. 86. At any time Congress may amend, alter or repeal these statutes. If it does, then the rights of the Indians would be changed accordingly. The effect is clear therefore, namely, that Congress has authorized the use of the Oklahoma law. Ultimately, however, the rights depend on and pass by force of the law of the United States. In all events, the property passes in accordance with the law of Oklahoma, but by virtue of the laws of the United States.

The same situation exists with respect to the trust property passing to the Mission Indians. It passes in accordance with 26 Stats. 712, 39 Stats. 976. At any time Congress may amend, alter or repeal these laws. The property passes in accordance with the laws of California, but by virtue of the law of the United States. Essentially there is no difference therefore between the passage of the trust property in Oklahoma and the passage of such trust property in California. Both ultimately pass by the laws of the United States. Such being the case, there is no logical distinction between the *Oklahoma Tax Commission* cases and the instant case. The *Oklahoma Tax Commission* cases consequently constitute authority for the principle that trust allotments passing by virtue of the law of the United States, nevertheless are taxable for inheritance tax purposes by the state where the Indian resided.

The issue of whether the property in the case of the Oklahoma Indians passed by virtue of the laws of Oklahoma or by virtue of the laws of the United States was

raised in the lower court in the *Oklahoma Tax Commission* case. In *United States v. Oklahoma Tax Commission,* 131 F. 2d 635, relying on *Childers v. Beaver,* 270 U. S. 555, 46 S. Ct. 387, 70 L. Ed. 730, the majority opinion therein held that the trust properties of the Oklahoma Indians passed by virtue of the laws of the United States and not by virtue of the laws of Oklahoma and consequently denied the right of Oklahoma to assess a tax. Judge Murrah contended in his dissenting opinion that actually the rights passed by virtue of the law of Oklahoma. This was the main issue in the lower court.

The Supreme Court in reversing the lower court did not in any way allude to this point. It stated that there were only two questions involved:

> ". . . The basic questions to be decided are whether, as a matter of state law, the state taxing statutes reach these estates, and whether Congress has taken from the State of Oklahoma the power to levy taxes upon the transfer of all or a part of property and funds of these deceased Indians."
>
> *Oklahoma Tax Commission v. United States,* 319 U. S. 598 at 600.

Whether the property passed by the laws of the United States or by the laws of Oklahoma was evidently considered a question of such little significance that the Supreme Court did not deem a discussion of it necessary. The only possible conclusion is that regardless of whether the property passed by the laws of the United States or by the laws of Oklahoma, the result was the same, namely, Oklahoma could assess the inheritance tax.

And this principle is in keeping with the fundamental principles of tax jurisdiction. The Mission Indians, as

the Oklahoma Indians, are residents of their respective states. There is no question but that as to properties not restricted or held in trust, they can dispose of them by will or the laws of intestate succession in their own states and be subject to an inheritance tax on such property. The only issue in the present case is whether the State of California can assess an inheritance tax on the trust allotments. If Guadalupe Arenas or Eleuteria Arenas had by their own industry accumulated non-trust property there is no question but that on their death it would pass through the probate courts of the State of California and be subject to an inheritance tax. In *Acosta v. County of San Diego,* 126 Cal. App. 2d 455, 272 P. 2d 92, it was held that a Mission Indian living on a reservation was nevertheless a resident of California and entitled to welfare assistance from the County of San Diego. The discussion by the court therein reveals the attitude of the State of California with respect to the Mission Indians. In brief, it is the conclusion of that case that they are in all respects citizens and residents of California and entitled to all the privileges and rights of other citizens. In *Acosta v. County of San Diego,* 126 Cal. App. 2d 455 at 463, it was said:

> "On the contrary, the state's jurisdiction extends to all matters which do not interfere with the control which the Federal Government has exercised over Indian affairs."

And at page 464 it was said:

> "Reservation Indians who purchase or possess unrestricted property outside the reservation enjoy no more advantageous tax status than their white fellow citizens."

The Mission Indians are therefore residents of the State of California and subject not only to the privileges of that citizenship but also to the obligations thereof.

As pointed out in *Miller Bros. Co. v. Maryland,* 347 U. S. 340, 74 S. Ct. 535, 98 L. Ed. 744, at 345, the basis of death taxation is sufficiently based on domicile.

In *Graves v. Schmidlapp,* 315 U. S. 657, 62 S. Ct. 870, 86 L. Ed. 1097, the right of the state of domicile to assess a tax was reaffirmed even though the property was subject to the control of another state and under the legal protection of that state. At page 661 of said case it was held:

> "In numerous other cases the jurisdiction to tax the use and enjoyment of interests in intangibles, regardless of the location of the paper evidences of them, has been thought to depend on no factor other than the domicile of the owner within the taxing state. And it has been held that they may be constitutionally taxed there even though in some instances they may be subject to taxation in other jurisdictions, to whose control they are subject and whose legal protection they enjoy."

The Controller submits therefore that the decisions in the Oklahoma Tax Commission cases permit a state to assess an inheritance tax even though the trust property passes by virtue of the laws of the United States, and further alleges that this jurisdiction is ultimately based on the fact that the decedents in question were at the time of their deaths residents of the State of Oklahoma. The same jurisdictional facts exist in the present case and therefore California has the right to assess an inheritance tax on the transfer of the trust allotments even though the trust allotments ultimately pass by virtue of the law of the United States.

II.

The Inheritance Tax Law of the State of California Includes Within Its Scope the Transfer Upon Death of the Trust Allotments Herein.

Section 13601 of the Revenue and Taxation Code of the State of California provides as follows:

> "§13601. Transfer by will or succession: by residents. A transfer by will or the laws of succession of this State from a person who dies seized or possessed of the property transferred while a resident of this State is a transfer subject to this part."

There is no doubt but that the trust allotments herein passed in accordance with the laws of succession of the State of California. There is, however, apparently a difference of opinion as to the Federal law which made applicable the laws of succession of the State of California.

It is the opinion of the State Controller that the laws of California were made applicable by virtue of the provisions of Section 5 of the Mission Indian Act (26 Stats. 712, 713) which provides as far as is relevant:

> ". . . in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or in case of his decease, of his heirs according to the laws of the State of California . . ."

Judge Mathes [Tr. p. 80] attributes it to 25 U. S. C., Sec. 348 which is part of the General Allotment Statute. It provides as far as is relevant:

> ". . . in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the law of the State or Territory where such land is located . . ."

In either event the effect is the same, that is, the laws of succession of the State of California are made applicable to the trust allotments in question. Such being the case, the trust allotments passed in accordance with the laws of succession of the State of California and consequently an inheritance tax is due by virtue of the provisions of Section 13601 of the Revenue and Taxation Code.

It is true that the argument might be made that the property passed by virtue of the laws of the United States and that therefore the provisions of Section 13601 would not be applicable. Such however is not the interpretation that is placed on the statute by the California Supreme Court. In *Estate of Simpson*, 43 Cal. 2d 594, 275 P. 2d 467, in considering the scope of the inheritance tax law it stated at page 597:

> "The inheritance tax is not a tax on the property itself, but is an excise imposed on the privilege of succeeding to property upon the death of the owner . . . It arises under a general law, . . . dealing with a particular area of taxation. An exemption from the burden of such general statute must be clearly shown and will not be inferred from the doubtful import of statutory language . . ."

The intent of the law therefore is broad in coverage and consequently the Controller submits that Section 13601 includes within its scope the trust allotments which upon death of Guadalupe Arenas and Eleuteria Arenas passed to their heirs.

Even if it is contended that Section 13601 does not cover the transfer upon death of the trust allotments, in that they passed not by virtue of the laws of the State of California but by virtue of the laws of the United States, the Controller submits that the transfer would still come

within the provisions of the Inheritance Tax Law. In this respect he refers to Section 13648 of the Revenue and Taxation Code which provides:

> "It is hereby declared to be the intent and purpose of this part to tax every transfer made in lieu of or to avoid the passing of property by will or the laws of succession."

Transfer is defined in Section 13304 of said code as follows:

> " 'Transfer' includes the passage of any property, or any interest therein or income therefrom, in possession or enjoyment, present or future, in trust or otherwise."

Certainly the definition of transfer could not be broader and it clearly includes in its scope the passage of any interest in property and therefore would include the decedent's interest in a trust allotment. Section 13648 is all-inclusive and would include such a transfer of trust allotments in the event it were held that Section 13601 was not applicable.

In *Oklahoma Tax Commission v. United States,* 319 U. S. 598 at 600, 63 S. Ct. 1284, 87 L. Ed. 1612, the United States Superior Court considered the scope of the Oklahoma Inheritance Tax Statute and concluded that it was sufficiently broad in scope to cover the transfer upon death of the trust allotments. At page 600 it stated:

> "The two controlling statutes broadly provide for a tax upon all transfers made in contemplation of death or intended to take effect after death as well as transfers 'by will or the intestate laws of this state' ".

An examination of the Oklahoma Inheritance Tax Statute (Laws of 1935, Ch. 66, Art. 5 and its reenactment in 1939 Laws of 1939, Ch. 66, Art. 9, p. 420, Sec. 1) reveals that it is similar in scope to the California Inheritance Tax Law. (Stats. of 1935, Ch. 358, and as codified Secs. 13301-14901, incl.) In fact the California statute may be said to be broader in scope in view of the provisions of Section 13648 which is a catch-all statute not included in the Oklahoma Statute.

If therefore the United States Supreme Court considered the Oklahoma Statute sufficiently broad in coverage to tax the trust allotments herein, clearly the California statute equally covers the taxation of said trust allotments.

Nor is the fact that the decedents herein are Indians exclude them from the operations of the Inheritance Tax Law. A close examination of the entire Inheritance Tax Law reveals no distinction as to the race of the persons covered. Section 13305 defines decedent or transferor as follows:

> " 'Decedent' or 'transferor' means any person by or from whom a transfer is made, and includes any testator, intestate, grantor, bargainor, vendor, assignor, donor, joint tenant, or insured."

Section 13306 defines transferee:

> " 'Transferee' means any person to whom a transfer is made, and includes any legatee, devisee, heir, next of kin, grantee, donee, vendee, assignee, successor, survivor, or beneficiary."

The language is all-inclusive. Where such is the situation the cases have held that Indians are included within the scope of the pertinent statute. In this respect in *Oklahoma Tax Commission v. United States,* 319 U. S. 598 at 606, it was said:

> "This court has repeatedly said that tax exemptions are not granted by implication. *United States Trust Co. v. Helvering,* 307 U. S. 57, 60. It has applied that rule to taxing acts affecting Indians as to all others. As was said of an excise tax on tobacco produced by the Cherokee Indians in 1870, 'If the exemption had been intended it would doubtless have been expressed.' Cherokee Tobacco, 11 Wall. 616, 620. In holding the income tax applicable to Indians, the court said: 'The terms of the 1928 Revenue Act are very broad and nothing then indicates that the Indians are to be excepted . . .'"

And this is the interpretation that the California courts would give to such a statute. In *Acosta v. County of San Diego,* 126 Cal. App. 2d 455, 272 P. 2d 92, the Mission Indians were held entitled to receive welfare aid under a general statute. The decision is based on the premise that they come within the provisions of general California statutes and are not excluded from their coverage.

The Controller submits therefore that the transfer upon death of the trust allotments herein come within the scope of the California Inheritance Tax Law and consequently are taxable upon death by the State of California.

III.

A Lien for California Inheritance Taxes Exists Against the Funds on Deposit in the Registry of the Court.

The California Inheritance Tax Law provides for a lien for such taxes which attach as of the date of the decedent's death. In this respect reference is made to Section 14301 of the Revenue and Taxation Code of California which provides:

> "Every tax imposed by this part, together with any interest on the tax, is a lien upon the property included in the transfer on which the tax is imposed. Except as otherwise provided in this chapter, the lien remains until the tax and interest are paid in full."

Section 13401 provides as follows:

> "An inheritance tax is hereby imposed upon every transfer subject to this part."

Section 14102 provides as follows:

> "Every tax imposed by this part is due and payable at the date of the transferor's death."

The language of the three sections indicates that a lien exists for every tax imposed and further that the tax imposed is imposed as of the date of decedent's death. It follows therefore that the lien exists from the date of decedent's death. This is affirmed by *Chambers v. Gibson,* 178 Cal. 416, 173 Pac. 752. That case held that the lien attached as of the decedent's death. While the statute of limitation was held to have barred that particular proceeding, the Controller points out that a subsequent

amendment to the Inheritance Tax Law (Sec. 14674 appendix) eliminated the question of the Statute of Limitations and it was so held in *Riley v. Havens,* 193 Cal. 432, 225 Pac. 275. There is no doubt therefore that a lien for inheritance taxes existed from the date of the deaths of Guadalupe Arenas and Eleuteria Arenas.

In the Findings of Fact specifically paragraph (8) thereof [Tr. p. 89] and paragraph (9) [Tr. pp. 88, 89] it was found that the allegations contained in paragraph XVI [Tr. p. 16] and paragraph VII [Tr. p. 33] of the respective petitions of the parties were true. Said paragraph stated that the release of the California Inheritance Tax lien on the trust allotments was on condition that the proceeds of the sales made herein would be transferred and affixed to the funds deposited in the registry of the court. In addition paragraph (6) of the Findings of Fact [Tr. pp. 88, 89] affirms that the liens, if any, would attach to funds in the registry of the court.

There is no question therefore but that a lien for inheritance taxes attaches as of the date of a decedent's death to property subject to the California Inheritance Tax Law. If then the trust allotments herein are found to be subject to the California Inheritance Tax Law, it follows that a lien for inheritance tax attached at the date of death. By agreement among the parties the lien attached to the proceeds of the sales of the trust allotments and accordingly a lien exists on said proceeds presently held in the registry of the court.

Nor is such a lien barred by the fact that the property was held in trust by the United States. This question was raised in the *Oklahoma Tax Commission* cases and rejected by the United States Supreme Court. In *West v. Oklahoma Tax Commission,* 334 U. S. 717, at 727, it stated:

> "The result of permitting the imposition of the inheritance tax on the transfer of the trust properties may be, as we have noted, to deplete the trust corpus and to create lien difficulties. But those are normal and intended consequences of the inheritance tax and until Congress has in some affirmative way indicated that these burdens require that the transfer be immune from the inheritance tax liability, the Oklahoma Tax Commission case permits that liability to be imposed . . ."

The State Controller submits therefore that a lien exists against the funds presently held in the Registry of the District Court.

Conclusion.

The State Controller submits therefore:

1. That the transfer of the trust allotments in question upon the death of Guadalupe Arenas and Eleuteria Arenas are not exempt by Federal law from inheritance taxes imposed by the State of California either by virtue of specific statutory prohibition or by reason of the lack of jurisdiction on the part of the State of California.

2. That the California Inheritance Tax Law includes within its scope the taxation of trust allotments held in trust by the United States for the Mission Indians.

3. That a lien for California inheritance taxes attached to said trust allotments as of the dates of death of Guadalupe Arenas and Eleuteria Arenas and that said lien continues in effect against the proceeds of sale of the trust allotments presently held in the Registry of the District Court.

Respectfully submitted,

JAMES W. HICKEY,
Chief Inheritance Tax Attorney,

WALTER H. MILLER,
Chief Assistant Inheritance Tax Attorney,

VINCENT J. MCMAHON,
Assistant Inheritance Tax Attorney,

Attorneys for Appellant.

APPENDIX.

Section 1360 State civil jurisdiction in actions to which Indians are parties. (28 U. S. C., §1360, 67 Stats. 588, 589.)

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian Country affected
California	All Indian country within the state

. . ."

(b) Nothing in this section shall authorize the alienation, encumbrance or taxation of any real or personal property, including water rights belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use or such property in a manner inconsistent with any Federal treaty, agreement or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right of possession of such property or any interest therein.

(c) Any tribal ordinance or action heretofore or hereafter adopted by an Indian tribe, band or community in

the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

Section 14674 (Revenue and Taxation Code of California).

Time limitations inapplicable. The provisions of the Code of Civil Procedure relative to the time of commencing civil actions do not apply to any action or proceeding under this part to levy, appraise, assess, determine, or enforce the collection of any tax, interest, or penalty imposed by this part.